

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q86739

Pascal BRUNA

Appln. No.: 10/532,961

Group Art Unit: 3771

Confirmation No.: 9115

Examiner: Kristen Clarette MATTER

Filed: April 27, 2005

For: FLUID DISPENSER DEVICE WITH A DOSE INDICATOR

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF (37 C.F.R. § 41.37)

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief, dated September 2, 2009, Applicant is hereby submitting amended pages 4 and 5 of the appeal brief. As indicated in the Notification of Non-Compliant Appeal Brief, the entire Appeal Brief is not required to be resubmitted. Accordingly, only amended pages 4 and 5 are hereby being submitted.

Pages 4 and 5 are being amended to include a statement of the status of all the claims in the proceeding in accordance with 37 C.F.R. § 41.37(c)(1)(iii).

APPEAL BRIEF UNDER 37 C.F.R. § 41.37
U.S. Application No. 10/532,961

Attorney Docket No.: Q86739

The USPTO is directed and authorized to charge the statutory fee (37 C.F.R. §41.37(a) and 1.17(c)) and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE

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CUSTOMER NUMBER

Date: October 2, 2009

III. STATUS OF CLAIMS

The status of the claims is as follows:

Claims 1-3: rejected;

Claims 4, 5: canceled;

Claims 6-22: rejected.

The rejection of claims 1-3 and 6-22 is being appealed.

Additionally, the Advisory Action, dated April 1, 2009, and the Notice of Panel Decision from Pre-Appeal Brief Review, dated May 13, 2009, both indicate that only claims 1-3 and 6-21 (but not claim 22) are pending in the current application. Applicant notes that claim 22 was entered by right in Applicant's response under 37 C.F.R. § 1.111, filed on October 8, 2008, and has not been canceled. Further, during an interview on April 6, 2009, the Examiner indicated that the listing of only claims 1-3 and 6-21 as the only claims pending in the Advisory Action, dated April 1, 2009, was a typographical error. As such, claim 22 is pending in the current application and has not been canceled.

The rejections are summarized as follows:

Claims 6-9 are rejected under 35 U.S.C. § 112, second paragraph. The Examiner indicated that claim 6 depends from claim 5, a canceled claim. As noted below, this rejection has been addressed by the Amendment filed on March 23, 2009, which has been entered by the Examiner.

Claims 1-3 and 6-22 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017) and Liou (US 5,895,159).

Claims 1-3 and 6-20 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-8 of co-pending Application No. 10/532,073. The provisional rejections on the ground of non-statutory obviousness-type double patenting are not at issue in this appeal. By not addressing the provisional rejections on the ground of non-statutory obviousness-type double patenting, Applicant makes no assertion regarding the merits of these rejections.

All of the claims pending in the appeal are set forth in their entirety in the Claims Appendix, attached to this Brief on Appeal.